

Remarks/Arguments

The present Request for Continued Examiner (RCE) and submission under 37 C.F.R. § 1.117 in made in response to the final Office Action dated September 26, 2007, and identified as Paper No. 20070921. Claims 11-17 are pending.

In the Action, the Examiner rejected claims 11-15 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,809,797 to Baselmans et al ("*Baselmans*"). Claims 16-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Baselmans* in view of U.S. Patent No. 6,867,420 to Matheis et al ("*Matheis*").

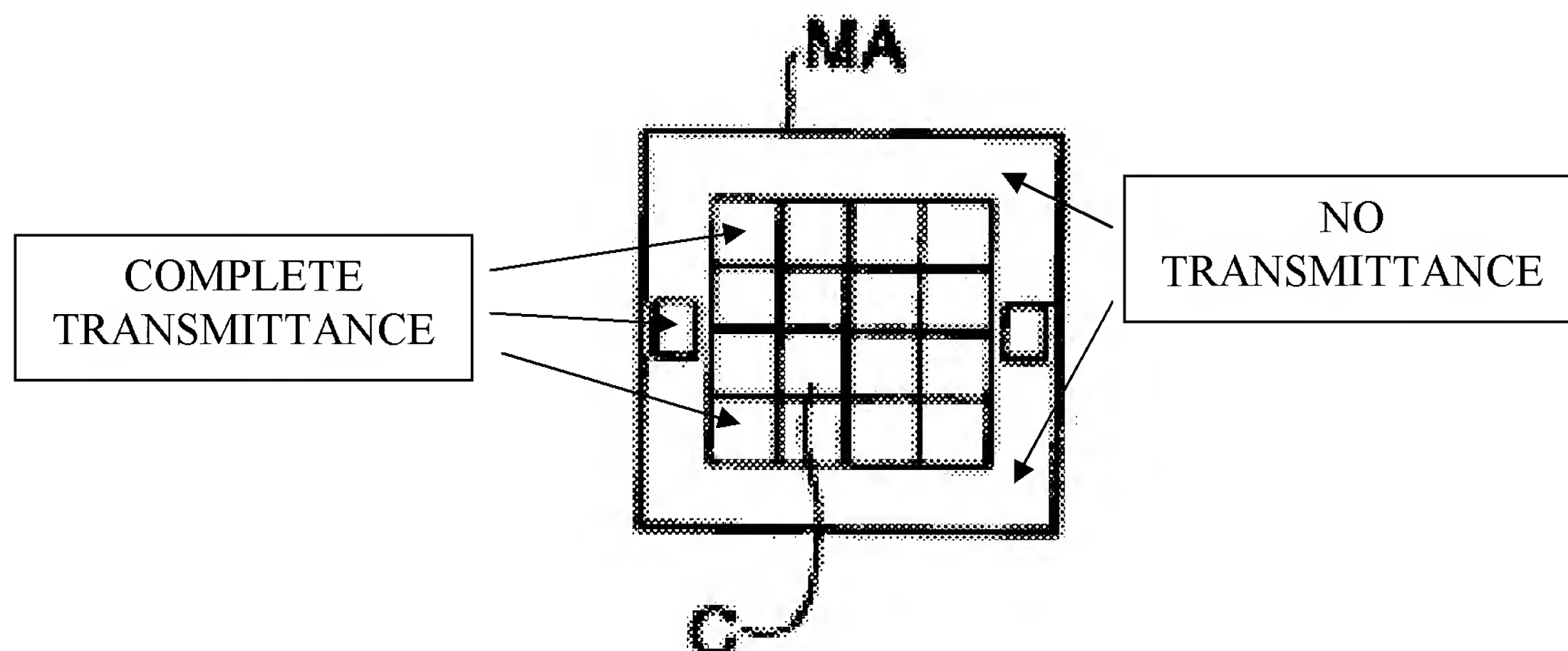
I. 35 U.S.C. § 102 Rejections

In response to Applicant's argument that *Baselmans* does not disclose a filter having two different regions of transmittance, the Examiner points to mask MA as having a peripheral area having a first transmittance and a central region having a second transmittance. The Examiner is thus appearing to consider no transmittance to be a type of transmittance. A mask is not a filter as that term is understood and used in the present application. A mask is simply a stencil that creates a pattern of presence or absence, while a filter selects what is allowed to pass and thus attenuates what is being passed.

Although Application disagrees that the lack of something can be something, Applicant has amended the claims to avoid any further ambiguity and draw a distinction between the mask of *Baselmans* and the true filtering of the present invention. In particular, Applicant has amended claim 11 to recite "A filter for reducing non-uniformities in a plasma etching process, comprising: a first region having a first **non-zero** transmittance; and a second region having second **non-zero** transmittance that is different than said first non-zero transmittance level." As described in the specification, "filter 50 may be designed with a series of eccentric regions 88

having *gradually decreased transmittance* to compensate for etch profile 86 and spatially *attenuate* the etching of wafer 24 to smooth the non-uniformities.” See Paragraph [0034] (emphasis added). This description clearly involves varying levels of transmittance that attenuate the radiance rather than simply blocking the radiation so that there is no transmittance, as is the case with *Baselmans*.

The structure identified by the Examiner in *Baselmans* does not have a first non-zero transmittance and a second non-zero transmittance that is different than the first. Instead, the mask disclosed in *Baselmans* has two regions that both allow complete transmittance and a region that provides for no transmittance. As seen in the relevant portion Fig. 1 of *Baselmans*, reproduced below, the mask allows transmittance in the center and in the peripheral region where the alignment marks are located.



All of the open areas in *Baselmans* comprise a first non-zero transmittance, as they all transmit equally and fully. The remaining portions of the mask do not transmit at all, *i.e.*, they have zero transmittance, and thus cannot be said to allow transmittance at a second non-zero level as specifically recited in the claims. Zero transmittance is the complete opposite of non-

zero transmittance, and the solid portions of the mark MA in *Baselmans* cannot conceivably comprise the second non-zero transmittance level recited in the claims when the completely block transmittance. Similarly, the alignment openings and the mask opening are not first and second regions of non-zero transmittance of different levels, as they all transmit at the same level. Thus, *Baselmans* lacks an express element recited in claims 11-17 and does not anticipate under 35 U.S.C. § 102. MPEP 2131 (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference”) (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

The Examiner also responded to Applicant’s argument that *Baselmans* does not disclose any filtering of the radiance by pointing out that the claims must structurally distinguish the invention. Applicant’s claims specifically call for a filter having first and second regions of non-zero transmittance. Thus, the claimed filter includes the structure for filtering the level of radiance that is allowed to pass, *i.e.*, there are two different regions of non-zero transmittance in the filter which necessarily attenuate the radiance. By contrast, *Baselmans* discloses a mask than either lets radiance through or does not let radiance through. Thus, *Baselmans* does not include any structure that attenuates radiance as with the claimed invention. The function of filtering at various levels of transmittance is accomplished by the structure affirmatively recited in the claims and is utterly absent from *Baselmans*.

I. 35 U.S.C. § 103 Rejections

The combination of *Baselmans* and proposed by the Examiner to reject claims 16-17 under 35 U.S.C. § 103(a) thus lacks a limitation recited in the claims, as discussed with respect to *Baselmans* above, and therefore fails to state a *prima facie* case of obviousness. MPEP §

2143.03 (“To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art”). In addition, the motivation identified by the Examiner for modifying *Baselmans* in view *Matheis* is insufficient as a matter of law. In particular, one of ordinary skill in the art would not use the process of *Matheis* to make a simple mask, such as that disclosed in *Baselmans*. More specifically, *Baselmans* discloses a simple stencil used for selective etching and therefore has no need to manufacture according to *Matheis*. More importantly, the modification proposed by the Examiner ***has nothing to do with minimizing scattered light***. *Matheis* specifically discloses that it is the step of minimizing the distance between the optical filter and the detector that minimizes scattered light (and the construction of the detector) – not the construction of the filter. Col. 4, lines 45-59. Accordingly, the motivation relied on by the Examiner is for something else entirely. MPEP § 2143.01(III)(“The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination”). As a result, the Examiner has not identified a proper motivation for the proposed changes, and has therefore failed to state a *prima facie* case of obviousness. MPEP § 2143.

With respect to claim 17, *Matheis* also fails to disclose varying the thickness to form the different regions of transmittance, an express claim limitation recited in claim 17. Indeed, such a construction is completely contrary to the mask design shown in *Baselmans* and the Examiner failed to explain how one of ordinary skill could construct the mask MA using the process of *Matheis*. MPEP § 2143.02 (“The prior art can be modified or combined to reject claims as *prima facie* obvious ***as long as there is a reasonable expectation of success***”).

In view of the foregoing amendments as supported by these remarks, the Examiner’s reconsideration is requested and allowance of the present application is believed to be in order.

If the Examiner believes a phone conference with Applicant's attorney would expedite prosecution of this application, please contact the undersigned at (315) 218-8530.

Respectfully submitted,

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By: 
George R. McGuire
Reg. No. 36,603

BOND, SCHOENECK & KING, PLLC
One Lincoln Center
Syracuse, New York 13202-8530
(315)218-8515